

A-Z Guide

LABOUR INSPECTOR



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Overview

One of the objectives of the Employment Relations Act is to promote the effective enforcement of employment standards, in particular by conferring enforcement powers on Labour Inspectors, the Employment Relations Authority and the Employment Court.

Under the Employment Relations Act, Labour Inspectors have wide powers including entry to workplaces, inspection of records and documents, and the power to interview employers and employees. A Labour Inspector may also consider the employer's compliance with aspects of the Holidays Act, Wages Protection Act and Minimum Wage Act.

Every Labour Inspector must produce their warrant of designation for inspection if requested to do so in the course of their duties.

A Labour Inspector may commence actions in the Employment Relations Authority to recover entitlements and wages and seek penalties.

Employment Standards

The Employment Relations Act provides for additional enforcement measures to promote the more effective enforcement of employment standards, especially minimum entitlement provisions. Minimum entitlement provisions mean entitlements under the Holidays Act, Minimum Wages Act and Wages Protection Act.

A Labour Inspector can apply to the Court for:

- declarations of breach in relation to breaches of minimum entitlement provisions that are serious
- pecuniary penalty orders for breaches of minimum entitlement provisions that are serious
 - For an individual - a maximum of \$50,000
 - For a company - a maximum of \$100,000 or 3 times the amount of financial gain made by the company from the breach (whichever is higher)
- compensation orders for serious breaches of minimum entitlement provisions to compensate employees who have suffered or are likely to suffer loss or damage as a result
- banning orders based on certain grounds, including persistent breach of employment standards

Improvement notices

A Labour Inspector who believes on reasonable grounds that any employer is failing, or has failed, to comply with any provision of the relevant Acts may issue the employer with an improvement notice that requires the employer to comply with the provision.



The relevant Acts are :

- Employment Relations Act
- Care and Support Workers (Pay Equity) Settlement Act
- Equal Pay Act
- Home and Community Support (Payment for Travel Between Clients) Settlement Act
- Minimum Wage Act
- Parental Leave and Employment Protection Act
- Wages Protection Act
- Holidays Act

So an improvement notice may be issued on matters such as rest and meal break obligations, not responding in the legislative timeframes to matters like flexible working hour's requests, union access requests and demand notices relating to unpaid wages and labour related legislation.

The notice issued must state:

- the provision that the Labour Inspector reasonably believes that the employer is failing, or has failed, to comply with; and
- the Labour Inspector's reasons for believing that the employer is failing, or has failed, to comply with the provision; and
- the nature and extent of the employer's failure to comply with the provision; and
- the steps that the employer could take to comply with the provision; and
- the date before which the employer must comply with the provision.

The notice may state the nature and extent of any loss suffered by any employee as a result of the employer's failure to comply with the provision if applicable.

The notice may be issued:

- by giving it to the employer concerned; or
- if the employer does not accept the improvement notice, by leaving it in the employer's presence and drawing the employer's attention to it.

An improvement notice may be enforced by a compliance order.

An employer may, within 28 days after the improvement notice is issued to the employer, lodge with the Employment Relations Authority an objection to the notice.

An employer who fails to comply with an improvement notice is liable, in an action brought by a Labour Inspector, to a penalty imposed by the Authority.

A Labour Inspector may not also bring an action seeking a penalty in respect of the same matter under any of the relevant Acts.

Enforceable undertakings

A Labour Inspector and an employer may agree in writing that the employer will undertake by a specified date an enforceable undertaking to:

- rectify the breach of any provision of the relevant Acts; or
- pay money owed to an employee under a provision of the relevant Acts; or
- take any other action that the Labour Inspector determines is appropriate having regard to the nature of the breach of the provision of the relevant Act.

The employer may withdraw or vary an enforceable undertaking agreed at any time, but only with the consent of the Labour Inspector.

An enforceable undertaking may be enforced by the Authority making a compliance order. An employer who fails to comply with an enforceable undertaking that remains in force is liable, in an action brought by a Labour Inspector, to a penalty imposed by the Authority.

Demand notice

A demand notice is a notice on a prescribed form demanding that an employer pay to an employee the amount specified.

A Labour Inspector may serve on an employer a demand notice if:

- an employee makes a complaint to the Labour Inspector, or the Labour Inspector believes on reasonable grounds, that an employee has not received wages or holiday pay or other money payable by the employer to the employee under the Minimum Wage Act or the Holidays Act; and
- the Labour Inspector has given the employer not less than 7 days to comment on the details; and
- if after considering any comments made by the employer the Labour Inspector is satisfied that the employee is entitled to the wages or holiday pay or other money; and
- the Labour Inspector is satisfied that the employer is not willing to pay the wages or holiday pay or other money to the employee in a reasonable manner or within a reasonable time.

A demand notice has no effect to the extent, if any, that it claims money that was payable more than 6 years earlier than the date on which the demand notice is served on the employer.

Banning orders

The Employment Relations Act provides that the Court may make a banning order against a person in certain circumstances.

The circumstances include where the Court is satisfied that the person has persistently breached or persistently been involved

in the breach of 1 or more employment standards or the person has been convicted of an offence under the Immigration Act 2009 covering exploitation of unlawful employees and temporary workers.

A banning order would prohibit the person from doing one or more of the following:

- entering into an employment agreement as an employer
- being an officer of an employer
- being involved in the hiring or employment of employees

A banning order has effect for 10 years or any shorter period specified on the order.

A Labour Inspector or an Immigration Office may apply for a banning order.

Infringement notice

A Labour Inspector may issue an infringement notice on the employer if there are reasonable grounds for believing that the employer has failed to :

- retain a signed copy of the employee's employment agreement or failed to retain a copy of the intended agreement if unsigned; or
- keep a wage and time record; or
- keep a holiday and leave record.

The infringement fee payable to the Crown Bank Account for an infringement offence is \$1,000. However, the maximum agreement aggregate fee an employer is liable to pay in a 3-month period is \$20,000. The employer is not liable to pay an infringement fee and a penalty under the Employment Relations Act for the same conduct.

Recovering money

A Labour Inspector can bring a claim on behalf of an employee to recover wages and other money owing under the Holidays Act and the Minimum Wage Act. The Labour Inspector can also bring a claim on behalf of an employee to recover wages under the Wages Protection Act. An action can be taken in relation to unauthorised deductions and premiums charged for employment.

Holidays Act

Labour Inspector's powers

The Labour Inspector has the power to make determinations in relation to Annual Holidays, Bereavement Leave, Alternative Holidays, Public Holidays and Sick Leave. A Labour Inspector may also take proceedings on behalf of an employee to recover



unpaid holiday pay or leave pay.

Annual Holidays

A Labour Inspector may determine ordinary weekly pay, relevant daily pay, and average daily pay where an employer and employee are unable to agree on the rate.

A Labour Inspector may determine if the parties cannot agree on pay-out in relation to an employee request to pay out of annual holidays, up to one week under the Holidays Act.

A Labour Inspector may determine if an employer and employee cannot agree on how an employee's entitlement to 4 weeks' annual holidays is to be met, a Labour Inspector may determine the matter for them.

Bereavement Leave, Alternative Holidays, Public Holidays and Sick Leave

A Labour Inspector may determine the amount of the employee's relevant daily pay, or average daily pay.

A Labour Inspector may determine what would otherwise be a working day if an employer and employee cannot agree under the Holidays Act whether a day would otherwise be a working day for an employee.

Consultation requirement

Before making a determination, a Labour Inspector must:

- discuss the matter with the employer and employee; and
- give the employer and employee the opportunity to comment on what the Labour Inspector proposes to consider in making the determination.

Penalties

An action for the recovery of a penalty may be brought if permitted in a particular penalty provision, by a Labour Inspector. The maximum penalty is:

- for an individual - \$10,000
- for a company - \$20,000

A Labour Inspector may recover in the District Court as a debt due to the Crown any penalty ordered by the Authority or the Court to be paid to the Crown.

Enforcing payment of penalty

The Chief Executive of the Ministry of Business Innovation and Employment or a Labour Inspector may recover in the District Court as a debt due to the Crown any penalty ordered by the Authority or the Court to be paid to the Crown.

Remember

- Always call AdviceLine to check you have the latest guide.
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get one of our Lawyers or Consultants to provide formal assistance.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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Published: June 2024

